



NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary of State

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Greetings!

In preparing for this greeting, I reviewed the one published in the December 2006 edition of *Notary Notes*. I soon realized that my concerns, cautions, observations, and recommendations are still the same.

That is, as a commissioned notary public, you have a position of trust, which requires you to perform your duties with the utmost integrity. The notarial duties you perform are not just meaningless clerical functions. They are significant legally required notarial duties established in state law based on hundreds of years of history.

A notary is an officer of the state. Therefore, when applying to become a notary you executed the following oath of office before a notary public who completed the jurat:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God."

Do you remember it? It is a personal commitment not to be taken lightly.

I emphasize this because of the number of notary related violations during the past several years. In another portion of this newsletter are listed those that were referred to the Attorney General's office since July 2006. Please note the monetary fines associated with some of them. The list could even be longer. However, there were many more violations handled with a letter of reprimand or admonishment.

What is disturbing is the discovery of a majority of these violations on the forms related to the notary process itself, e.g., notary bond and application for a commission. There were missing dates (day or year); incomplete, wrong, or missing venues; no acknowledgment or jurat text (common with adoption documents); incorrect listed commission expiration dates; unlawful use of a notary seal embosser; notarizing one's own signature; not witnessing the signature being affixed to the documents, etc. Since they are violations, they obviously cannot be ignored, even if they might be inadvertent errors.

For that reason, I urge you to read every word in this newsletter and to review the attached law periodically. Additionally, review the previous editions of *Notary Notes* on the Secretary of State's website at www.nd.gov/sos/notaryserv/.

Your position is essential and one of trust. Do it right. Do it well. People depend on you. --Al Jaeger, Secretary of State

Expiration Date

When a notary's seal/stamp contains the expiration date, it is not necessary for the notary public to list it again anywhere on the document. By listing an incorrect commission expiration date, it could invalidate the document being notarized.



Signature of Notary

When performing a notarial act, the notary must sign his or her name exactly as it appears on the notary's certificate of commission and seal/stamp. Although it does not affect the validity of the document, it is a prohibited act and could subject the notary to the revocation of his or her commission or result in another disciplinary action.

Notarizing Documents

A legal notarization must contain a venue (state and county where the notarial act is being performed) and either an acknowledgement or a jurat. If this information is not on the document being notarized, the notary is responsible for either writing or typing this information on the document. To just sign and stamp a document and consider it notarized could result in disciplinary action.

Who Owns A Notaries Commission

It's not uncommon for an employer to pay the fees related to the commissioning of a notary. However, the commission is granted to the applicant and the commission stays with that person even though he or she may change employers during their six-year commission as a notary. Therefore, all of the notary's records and seal/stamp follow the notary and must never be retained by an employer.

Don't Permit

(Taken in part from the "Notary Bulletin", December 2006)

Do not permit anyone else to make corrections to a notarial certificate. Some companies and agencies, anticipating mistakes on a document, ask notaries to sign a statement giving them permission to correct errors made by the notary in completing the notarial certificate. While this may appear to be convenient, it is also dangerous and generally illegal.



Renewal Time

When renewing or applying for a new commission, an impression of the notary's seal/stamp must be submitted to the Secretary of State's office for approval on or before the month and day listed on the authorization to purchase. The law only allows the Secretary of State to issue the commission after the impression of the seal/stamp has been filed with this office. Approximately two months before the expiration of a notary's commission, the Secretary of State's office will send out a renewal packet. The renewal packet will be identified as "official mail" in the upper left corner of the envelope. At the same time or even before, private surety bond vendors, who have purchased a list under the state's open records law, will also be sending out renewal packets in an attempt to secure the notary's bond business. A notary may choose any vendor of their choice. The Secretary of State's office has no control over the information in the vendor packets.

Notarizing For Relatives

A notary should not notarize a document for close family members. Notarizing documents for parents, siblings, spouses, and other relatives opens an ethical "can of worms" for the notary. In many cases, a close family relationship with a signer automatically brings beneficial interest. Although North Dakota only prohibits notarizing if the notary is named in the document, it is best to refer close family members to another notary in order to avoid even the slightest appearance of bias.

Notarizing Multi-part Forms

(Taken in part from the "Notary Review" – Sept/Oct 2005)

If the customer wants each page notarized, perform a separate notarization on each page. This means that the customer must sign each page individually and each page must have notary wording. If each page does not have notary wording, separate the pages and attach a separate piece of paper with notary wording to each page of the form.

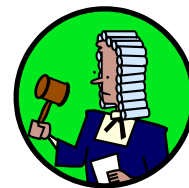


To Avoid Violations

Make sure your notarization is complete with month, day, and year, and also make sure your venue is complete. By missing one of these elements, you are violating the law. The first offense will subject you to a letter but any subsequent violations could cause your commission to be revoked or subject you to a fine.

Do not use old stamps and/or seals, use only stamps and seals approved by your most recent commission. Using old stamps and/or seals could subject you to a letter from the Secretary of State's office, but any subsequent offenses could be referred to the Attorney General and your commission may possibly be revoked or you could be subjected to a fine.

Notary Violations From July 1, 2006, through June 30, 2007



(Note: The circumstances surrounding each violation are often different and result in varying penalties even though some of the following abbreviated summaries may appear to be similar in nature. All violations are a matter of public record under the state's open records laws.)

July 19, 2006 – Notary violated 44-06-13.1(2) by notarizing a signature that was a party to the document: \$150 penalty.

August 21, 2006 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: six-month suspension.

August 21, 2006 – Notary violated 44-06-13.1(1) by notarizing her own signature; six-month suspension.

August 31, 2006 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: six-month suspension.

August 31, 2006 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

September 18, 2006 – Notary violated 44-06-13.1(3) by notarizing her own signature: voluntarily surrendered her commission.

October 23, 2006 – Notary violated 44-06-13.1(5) by notarizing a document when there was no year in the date; \$50 penalty.

November 7, 2006 – Notary violated 44-06-04 by not providing the Secretary of State's office with her seal/stamp and she had notarized: five-month suspension.

December 5, 2006 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: letter of reprimand.

December 8, 2006 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed: \$150 penalty.

January 1, 2007 – Notary violated 44-06-13.1(3) by notarizing her own signature: \$150 penalty.

February 14, 2007 – Notary violated 44-06-12 & 44-06-13.1 by leaving off venue, day, and month: three-month suspension.

February 20, 2007 – Notary violated 44-06-13.1(3) by notarizing his own signature: six-month suspension.

March 12, 2007 – Notary violated 44-06-04 by not affixing his stamp to the document: \$75 penalty.

March 20, 2007 – Notary violated 44-06-13.1(1) by notarizing a document not signed or re-signed in her presence: \$150 penalty.

March 20, 2007 – Notary violated 44-06-13 by notarizing without receiving a notary commission: did not respond to Attorney General – order of default.

April 9, 2007 – Notary violated 44-06-04 by affixing her seal and not her signature: \$50 penalty.

April 13, 2007 – Notary violated 44-06-04 by notarizing without receiving a notary commission: \$50 penalty.

New Notary Legislation *Effective August 1, 2007*

With the passage of Senate Bill 2196 by the 2007 Legislative Assembly, several changes occurred in the state's notary laws as found in Chapter 44-06 of the North Dakota Century Code. These changes are effective August 1, 2007, and are included in the copy of the law attached to this *Notary Notes* newsletter.

The new law allows the Secretary of State the option of requesting proof of an applicant's legal name. Although proof will seldom be required, it will be an option in those situations when the applicant's name is in an uncommon form.

Chapter 47-19 (copy attached) in the Century Code pertains to the various forms of acknowledgements a notary can use when performing notarial functions. For convenience purposes, SB 2196 included a cross-reference to that chapter in N.D.C.C. § 44-06-12.

However, in the past, state law did not include an example of a jurat. A jurat is the authentication of a signature made under an oath or affirmation and administered to a document signer when the signer is required to make a sworn statement about certain facts. The signer personally appears before the notary to swear (affirm) that the information contained in the document is true. An example of a jurat now appears in N.D.C.C. § 44-06-12.

The legislation made two significant additions to N.D.C.C. § 44-06-13.1, which is the section of law listing prohibited acts.

They are:

- In situations where a document is drafted in a language other than English, a notary cannot notarize a signature on the document unless there is attached a permanently affixed and accurate written English translation.
- Unless provided by law, the bill prohibits a notary from performing a notarial function on a document if it is a copy or certified copy of an original official document registered, filed, recorded, or with an official government seal on it. A notary also cannot certify a copy of a vital record (e.g., birth certificate), recordable instrument, or a public document with an official seal.
- The legislation created an entire new section of law, N.D.C.C. §44-06-13.2, detailing the disciplinary proceedings for denying, revoking, and suspending a notary's commission or imposing a lesser sanction (that includes fines) if warranted.

As an officer of the state, a notary is expected to be knowledgeable about the laws related to his or her duties. Therefore, take time to review the attached copy containing both the existing and the new law.



A Notary's Expiration Date

The expiration date for a notary's commission is chosen by the Secretary of State and appears on the notary's commission certificate. The commission certificate and the date on your notary stamp (unless you have an old stamp without a date) should match. The bond date and the date on your commission certificate **will not** be the same.



Copy of the Law

Attached to this newsletter is a copy of the North Dakota law as it pertains to Notaries Public.

Notary Notes is a newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue, Dept 108, Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 8-2901; www.nd.gov/sos

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